

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #7	CCRB Case #: 201904012	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/29/2019 11:10 AM	Location of Incident: § 87(2)(b)	Precinct: 72	18 Mo. SOL 10/29/2020	EO SOL 6/15/2021	
Date/Time CV Reported Mon, 04/29/2019 3:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/09/2019 11:08 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Pedro Rodriguez	28987	942490	072 PCT
2. POM Michael Giallanza	189	957622	072 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Anthony Taccetta	23504	959283	072 PCT
2. SGT Thomas Redmond	02646	948411	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Pedro Rodriguez	Abuse: Police Officer Pedro Rodriguez threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Pedro Rodriguez	Abuse: Police Officer Pedro Rodriguez entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
C.POM Pedro Rodriguez	Abuse: Police Officer Pedro Rodriguez searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.POM Pedro Rodriguez	Abuse: Police Officer Pedro Rodriguez failed to provide § 87(2)(b) with a business card	§ 87(2)(b)
E.POM Michael Giallanza	Abuse: Police Officer Michael Giallanza failed to provide § 87(2)(b) with a business card	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On April 29, 2019, § 87(2)(b) filed this complaint with IAB on behalf of her mother, § 87(2)(b) generating original log number 19-16730 [BR 01]. The CCRB received the case on May 9, 2019.

On April 29, 2019, at approximately 11:10 a.m., PO Pedro Rodriguez and PO Michael Giallanza, both of the 72nd Precinct, completed a search warrant execution at § 87(2)(b) in Brooklyn. PO Rodriguez and PO Giallanza then went upstairs to § 87(2)(b)'s apartment, § 87(2)(b) to seek consent to search her apartment for a firearm. PO Rodriguez allegedly told § 87(2)(b) that if she did not consent to a search voluntarily, then he would post an officer in front of her door and in 20 minutes, he would come back with a search warrant and ransack, destroy, or ruin her apartment (**Allegation A: Abuse of Authority**, § 87(2)(g)). At that time, § 87(2)(b) allowed the officers to enter and search her apartment (**Allegations B and C: Abuse of Authority**, § 87(2)(g)). PO Rodriguez and PO Giallanza did not provide business cards to § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g), § 87(2)(g), § 87(4-b)).

PO Giallanza and PO Rodriguez recorded a portion of their interaction with § 87(2)(b) on their Body-Worn Cameras [BRs 02 and 03, respectively].

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Pedro Rodriguez threatened to damage § 87(2)(b)'s property.

Allegation B – Abuse of Authority: Police Officer Pedro Rodriguez entered § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: Police Officer Pedro Rodriguez searched § 87(2)(b) in Brooklyn.

It is undisputed that after executing a search warrant at § 87(2)(b), PO Rodriguez, accompanied by PO Giallanza, went to § 87(2)(b)'s apartment, § 87(2)(b) to seek consent to search her apartment. It is further undisputed that PO Rodriguez advised § 87(2)(b) that if she did not consent to the search voluntarily, then the officers would return with a search warrant. It is undisputed that § 87(2)(b) then allowed the officers to enter and search her apartment and that she signed a Consent to Search Form [BR 04], § 87(2)(g).

§ 87(2)(b) was interviewed at the CCRB on June 21, 2019 [BR 05]. She stated that at approximately 6:00 a.m., she awoke to a loud sound from the door to § 87(2)(b), which is located one level below her apartment. § 87(2)(b) later learned that the sound came from officers ramming the door to § 87(2)(b). She later observed a husband and wife being escorted to a police vehicle in handcuffs. § 87(2)(b) said she was familiar with the individuals of § 87(2)(b) because she has lived in the building for many years; however, she did not know anything more about them. Although § 87(2)(b) stated that the officers were executing a search warrant in § 87(2)(b), § 87(2)(g) [BR 06]. Several hours later, § 87(2)(b) heard a knock on her door. § 87(2)(b) asked who was there and an officer, identified by the investigation as PO Rodriguez, told her it was the police. At that time, § 87(2)(b) opened the door. PO Rodriguez spoke to § 87(2)(b) in Spanish and told her that they wanted to “check” her apartment for a firearm. In her interview, § 87(2)(b) said that she then invited the officers into her apartment so they would not be talking about the matter in the hallway. However, in a follow-up

call on September 6, 2019 [BR 07], § 87(2)(b) clarified that before PO Rodriguez entered her apartment, he told her that if she did not allow them to search the apartment voluntarily, he was going to post an officer outside her apartment door so she could not leave and, within 20 minutes, he would get a search warrant for her apartment. He also said that when they came back with a warrant, they would ransack, ruin, or destroy her apartment. PO Rodriguez told her that he did not want to have to do that, which was why § 87(2)(b) needed to let him in. § 87(2)(b) then invited the officers into her apartment partly out of courtesy but also because she was afraid and did not want anything to happen to her apartment. Once the officers stepped into § 87(2)(b)'s living room, PO Rodriguez told her that an individual informed the officers that there was a firearm in her apartment. § 87(2)(b) allowed the officers to search her apartment because she was frightened and distressed by PO Rodriguez's threat to ruin her apartment. She went into the hallway as a K-9 unit walked a dog through her apartment. Although § 87(2)(b) said that she signed the Consent to Search Form after this search was conducted, PO Giallanza's BWC footage [BR 02] shows that she signed the form before the K-9 unit entered the apartment.

PO Rodriguez was interviewed at the CCRB on October 10, 2019 [BR 08] He stated that PO Anthony Tacetta, also of the 72nd Precinct, requested a search warrant for § 87(2)(b), § 87(2)(f), § 87(2)(e), § 87(2)(f) [BR 09].

§ 87(2)(e), § 87(2)(f)

As per PO Rodriguez, when the officers initially went to get the warrant, the judge "stopped" them because he or she "did not want to see any more cases." § 87(2)(e), § 87(2)(f)

The next morning, the officers obtained and executed the search warrant at § 87(2)(b). When the search yielded negative results for the firearm, PO Rodriguez and his supervisor, Sgt. Thomas Redmond (previously assigned to the 72nd Precinct), discussed the possibility that the firearm was upstairs in § 87(2)(b)'s apartment, § 87(2)(b). They considered seeking a search warrant for her apartment but were concerned that they could lose the firearm while they waited for the warrant. Moreover, because no one would be permitted in or out of § 87(2)(b)'s apartment while they obtained the warrant, the officers concluded that, rather than keep § 87(2)(b) in her apartment for a prolonged period, the best option was to speak with her and see if she would consent to a search of her apartment. Sgt. Redmond then directed PO Rodriguez to speak with § 87(2)(b) about consenting to a search of her apartment. Because PO Giallanza was standing near the stairwell, PO Rodriguez asked him to accompany him upstairs. § 87(2)(e), § 87(2)(f)

PO Rodriguez knocked on § 87(2)(b)'s door and she opened the door just enough so that she could see the officers. Once PO Rodriguez identified themselves as police, she opened the door fully. § 87(2)(b) asked PO Rodriguez what was going on downstairs and PO Rodriguez informed her that they executed a search warrant in § 87(2)(b). § 87(2)(b) told PO Rodriguez that that was her nephew's apartment and asked what the officers were looking for. PO Rodriguez informed her that they were looking for a firearm and that they believed her nephew, § 87(2)(b), § 87(2)(b)

brought the firearm into her apartment. § 87(2)(b) denied there were any firearms in her apartment. PO Rodriguez told § 87(2)(b) that they did not have a search warrant for her apartment, and that he required her consent to be able to search the residence. He further explained that if she was willing to allow the officers to enter and search her apartment, then he would ask her to sign a Consent to Search Form. He also said that if she did not consent to a search, then the officers' next step was to obtain a search warrant for her apartment. PO Rodriguez did not provide any time frame of how long it would take to obtain the warrant. He denied that he made any statement about how obtaining a warrant would impact condition of her apartment and denied that he threatened to ransack, destroy, or ruin her apartment if they came back with a warrant. PO Rodriguez felt that the officers had sufficient information to secure a search warrant for § 87(2)(b).

§ 87(2)(b)'s apartment § 87(2)(e), § 87(2)(f). He also said during his interview that if § 87(2)(b) did not consent to the search, the officers "most likely" would have then applied for a search warrant for her apartment. PO Rodriguez told § 87(2)(b) that if she consented to the search, they would look through everything in the apartment where things could be hidden. He then told § 87(2)(b) that to avoid having the officers make a mess of her apartment, they could request that a K-9 unit respond to conduct a walk-through with the dog. He told § 87(2)(b) that they would not damage anything in the apartment and that their intention was to find the AK-47, not to cause any damage. Around this point in the conversation (within two minutes of knocking on § 87(2)(b)'s door), § 87(2)(b) invited the officers into her apartment by saying, "Come on in." She simultaneously stepped away from the door to allow the officers to enter.

PO Rodriguez was the first to enter the apartment. As PO Rodriguez entered the apartment, § 87(2)(b) said that the officers could search her apartment because she had nothing to hide. PO Rodriguez then read the Consent to Search Form to § 87(2)(b) verbatim and gave it to her in English and in Spanish. He also continued explaining what the process would be if she allowed the dog from the K-9 unit to walk through the apartment. § 87(2)(b) read the form herself and then called her son, identified by the investigation as § 87(2)(b). § 87(2)(b) told her that they had nothing to hide. § 87(2)(b) signed the form and agreed to have the dog walk through her apartment. She told PO Rodriguez that she did not want them to get a search warrant because she was afraid it might affect her Section 8 housing. PO Rodriguez spoke to § 87(2)(b) primarily in Spanish but said they sometimes incorporated English. PO Rodriguez did not believe there was any language barrier or misinterpretation between himself and § 87(2)(b) and said that § 87(2)(b) was cooperative with the entire process. While awaiting the K-9 unit, PO Rodriguez conducted a cursory search of the apartment to ensure there was nothing in the immediate areas that could harm him or any other officers. This search involved looking under § 87(2)(b)'s bed and in the kitchen for anyone that may be hiding. When the K-9 unit arrived, the K-9 officer escorted the dog through the apartment. The dog indicated two areas that could contain a firearm or ammunition, including a closet in the living room and a safe § 87(2)(b) kept in § 87(2)(b)'s bedroom. § 87(2)(b) allowed PO Rodriguez to open the safe but there was no firearm inside. PO Rodriguez and the K-9 handler removed various items from the closet to allow the dog to walk deeper into the closet. The dog walked in and came back out without signaling that he detected anything further. PO Rodriguez and PO Giallanza also searched behind § 87(2)(b)'s couch because there were items tucked behind it and it was an easy place to conceal something. No firearm was found in the apartment.

PO Giallanza was interviewed at the CCRB on October 11, 2019 [BR 10]. § 87(2)(e), § 87(2)(f).

§ 87(2)(e), § 87(2)(f)

Approximately two hours after completing the search of § 87(2)(b) PO Giallanza was asked to accompany PO Rodriguez upstairs to seek consent to search § 87(2)(b). PO Giallanza was asked to accompany PO Rodriguez so he would not be alone at § 87(2)(b)'s apartment. He did not know why the officers were seeking consent to search § 87(2)(b)'s apartment and was not involved in the decision to do so. After an officer knocked on § 87(2)(b)'s door, she opened it fully. At that time, PO Rodriguez began speaking to § 87(2)(b) in Spanish. PO Giallanza does not understand Spanish and therefore could not understand what was said at the door. However, within a minute of opening the door, § 87(2)(b) said – in English – that the officers could come inside. PO Giallanza did not hear PO Rodriguez tell § 87(2)(b) that the officers would obtain a search warrant for her apartment if she did not consent to a search and did not hear PO Rodriguez threaten ransack, ruin, or destroy her apartment if they returned with a warrant. Upon entering the apartment, § 87(2)(b) read over a copy of the Consent to Search Form and signed it. PO Rodriguez continued speaking to § 87(2)(b) in Spanish but PO Giallanza could not understand what was being said. However, amid this, he heard § 87(2)(b) say, “No problem,” which, in tandem with her signing the form, PO Giallanza interpreted to mean that she was consenting to the search. PO Giallanza said that at some point prior to the arrival of the K-9 unit, he and PO Rodriguez entered § 87(2)(b)'s bedroom. PO Giallanza opened a shoebox to check if there was a firearm inside. PO Giallanza did not recall if he did this before or after § 87(2)(b) signed the Consent to Search Form. Once the K-9 unit arrived, the dog walked through the apartment and appeared focused on a closet by the front door. However, no actions were taken to follow-up on the dog's behavior.

Sgt. Redmond was interviewed at the CCRB on October 22, 2019 [BR 11]. He stated that a judge issued the search warrant for § 87(2)(b) on § 87(2)(b), and that the warrant was executed on April 29, 2019. § 87(2)(e), § 87(2)(f)

The ADA then told the officers to seek consent to search § 87(2)(b)'s apartment because they did not have enough for a search warrant for her apartment. Sgt. Redmond did not know the ADA's name or recall which officer contacted him.

§ 87(2)(e), § 87(2)(f)

Because the officers did not have enough information to pursue a search warrant, PO Rodriguez and PO Giallanza went upstairs to seek § 87(2)(b)'s consent to search the apartment. Sgt. Redmond stayed downstairs. When PO

§ 87(2)(g)

Allegation D – Abuse of Authority: Police Officer Pedro Rodriguez failed to provide § 87(2)(b) with a business card.

Allegation E – Abuse of Authority: Police Officer Michael Giallanza failed to provide § 87(2)(b) with a business card.

§ 87(2)(g), § 87(4-b)

NYC Administrative Code 14-174, Identification of Police Officers [BR 19] requires officers to provide a business card at the conclusion of searches of homes. Any business card used by an officer to identify himself shall be pre-printed and include at a minimum, the name, rank, shield number, and command and a phone number for the 311 customer service center and an indication that such phone number may be used to submit comments about the encounter. When an officer does not have a business card, the officer should offer to provide the above listed information on a handwritten card.

§ 87(2)(b) stated that she did not receive any business cards or a copy of the consent to search form [BR 20], but PO Rodriguez allowed her to take a photo of it, which she submitted to the CCRB [BR 21]. It lists PO Rodriguez's and PO Giallanza's names, commands, and tax and shield numbers. PO Rodriguez stated that he did not provide § 87(2)(b) with a business card, but that he did provide her with his phone number, name, and precinct. He believes he wrote this information on the back of the consent to search form. He did not have any business cards on him that day because he was working on his day off, and he had to leave his "go bag" with his business cards at the stationhouse to make room in his vehicle for search warrant equipment. PO Giallanza did not know if he was required to give a business card in this situation.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party [BRs 14 and 15, respectively].
- PO Rodriguez has been a member of service for 13 years and has been named a subject in four prior CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g)
- PO Giallanza has been a member of service for 4 years and this is the first complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

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- § 87(2)(b) declined to mediate this complaint.
- An online Notice of Claim request was submitted to the New York City Office of the Comptroller on October 22, 2019, and will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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